

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg No: 2006-17333

Issue No: 2009, 4031

Case No: ██████████

Load No: ██████████

Hearing Date:

December 4, 2006

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on December 4, 2006, pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. The Claimant was present and testified. The Claimant was represented by ██████████, attorney at law. ██████████ testified on behalf of Claimant. Margarite Browne, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for SDA and MA as of February 8, 2006.
2. Claimant is 5'6" tall and weighs 153 pounds.
3. Claimant is right handed.
4. Claimant is 44 years of age.
5. Claimant's impairments have been medically diagnosed as alcohol induced mood disorder, personality order NOS, and possible schizo-affective disorder.
6. Claimant's physical symptoms are fainting, dizzy spells, pain in knees and back, frequent urination, photosensitivity in eyes, muscle spasms, and difficulty focusing.
7. Claimant's mental symptoms are poor memory, poor concentration, panic attacks, anxiety attacks, flash backs, crying spells, confusion, fear and anger, nervousness around strangers, poor appetite, sleep disturbances, fatigue, suicidal thoughts, auditory hallucinations, paranoia and low self esteem.
8. Claimant takes the following prescription medications:
 - a) Vicodin
 - b) Elavil
 - c) Paxil
 - d) Flexeril
9. Claimant testified that he uses crutches to ambulate and that he is receiving physical therapy for his back leg shoulder and knee.
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 10th grade education and a GED degree.
12. Claimant is able to read/write/perform basic math skills although he has difficulty with division since his automobile accident.
13. Claimant last worked in [REDACTED] of 2006 sweeping.
14. Claimant has prior employment experience as an assistant driver/stocker which required a lot of walking and bending/stooping. Claimant also has experience as a play leader, teaching self defense and working at [REDACTED] sorting which required lifting up to 50 lbs and standing.
15. Claimant testified that he has physical limitations as follows:

Sitting:	40 minutes
Standing:	15 minutes

Walking: 15 feet
Grip/grasp: right hand okay

16. Claimant testified that he does not perform any household chores.
17. The Department received Claimant's request for a hearing on June 15, 2006.
18. Medical records were examined as follows, in part:

Physiatrist IME (Exhibit 1, pp. 3-9)

HX: The history was obtained from the patient who was not cooperative and had significant behavior issues and attitude which made it quite difficult for today's evaluation. Problems with legs all his life – alignment off – needs braces but cannot afford them. Sharp pain with numbness and tingling in both legs which is constant and radiates into his back. He admits to stiffness in his legs as well. 3 injuries to back in 1995 (sports injury, slip and fall on ice and an assault). Shoulder problems began in 1990 when shoulder was dislocated x 2 after he fell and then had a sports injury. Diagnosed with degenerative arthritis and treated conservatively. Shoulder pain is sharp and constant in nature. CHI in 2000 secondary to assault. Hx of CVA. Pt complains of hearing loss in right ear, blurred vision, headaches and memory loss. Drinking twice monthly.

PHYSICAL EXAM:

Shoulder: normal range of motion, slight tenderness in right scapular muscles
Spine: Tenderness present at all levels. No spasms. Range of motion testing not done as pt was not cooperative. No straight leg test raise done as pt not cooperative. Gait evaluation reveals antalgic gait. Pt refused to do heel, toe and tandem walking or squatting.

IMPRESSION: No objective findings for lower extremities. Back pain of nonradicular nature. No definitive objective shoulder findings.

Psychiatric IME (Exhibit 1, pp. 10-13)

COMPLAINTS: Depressed, easily irritated, drinking a pint of liquor per day, hearing voices.

MENTAL TREND AND THOUGHT CONTENT: Pt admits to hearing voices. The voices tell him different things. Sometimes he sees shadows. He feels people are after him and talking about him.

EMOTIONAL REACTION: The patient's mood was irritable. The patient's affect was blunted.

DX: Alcohol dependence; alcohol induced mood disorder, rule out schizo-affective disorder, personality disorder NOS

GAF: 45-50

PROGNOSIS: Fair to guarded

██████████ Internal Medical Exam Report (Exhibit 1, pp. 19-20)

DIAGNOSIS: Closed head injury, severe anxiety, knee pain (uses crutches)

GENERAL EXAM: Pt sits with eyes closed and not very cooperative. Denies substance abuse.

PHYSICAL LIMITATIONS: Lifting 20 lbs occasionally, no limitations on standing/walking and sitting, no pushing/pulling with right hand.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months
. . . 20 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made

at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant testified that he last worked in 2006. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

- (2) Capacities for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b)

To be eligible for MA-P, claimant must have a medically determinable impairment, meaning impairment(s) that can be demonstrated by a physical or mental examination, and/or by X-rays. Findings consist of symptoms, signs and laboratory findings. Signs are anatomical, physiological or psychological abnormalities which can be observed apart from statements (or testimony) of claimant which are considered symptoms. (20 CFR 416.928). Either claimant's or another's statements alone are not enough to establish a physical or mental impairment (20 CFR 416.929(a)) and must be supported by medically identifiable signs as explained above. The reason is because symptoms are a person's own private experience and may or may not be caused by a real physical or mental illness.

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as "non-severe" only if it "would not affect the claimant's ability to work," "regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

The medical evidence has not established that Claimant has a medically documented physical impairment. Claimant complains of leg, back and shoulder pain and Claimant indicated that he had previously been diagnosed with degenerative arthritis. Claimant's physician even placed him on physical restrictions. However, there are no medical records to document any physical impairment other than generalized pain. While the Department was ordered to obtain additional medical information by a 12/4/06 interim order and never followed through, the responsibility to provide medical information sufficient to support disability rests with Claimant. Therefore, the undersigned finds that there is no medical evidence of physical impairment.

Claimant has been diagnosed with alcohol induced mood disorder, personality disorder NOS, possible schizo-affective disorder and a closed head injury. However, the medical records also establish a history of alcohol abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

If Claimant stopped drinking, he would no longer have an alcohol induced mood disorder. It is unknown if the depression or possible schizoaffective disorder would remain. The Administrative Law Judge finds that the medical evidence has established that Claimant has a medically documented mental impairment that has more than a minimal effect on basic work

activities which has lasted or is expected to last more than twelve (12) months. Claimant's mental impairments will be evaluated at the next step.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.02 *Organic Mental Disorder* was reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has presented medical evidence supporting a medical diagnosis of alcohol induced mood disorder, personality disorder NOS, and possible schizo-affective disorder. Claimant's prior employment included sweeping, driver/stocker, self defense teacher and factory work. These jobs are all considered all require light to medium exertional level and are unskilled with the exception of the self defense teacher which is semi-skilled. Claimant has provided medical evidence of physical limitations of lifting 20 lbs occasionally and not pushing/pulling with the right hand. However, Claimant has no limitations on standing, walking or sitting. The undersigned finds the Claimant capable of light work based only on physical limitations. Claimant would, therefore, be able to return to his jobs of assistant driver/stocker as well as light industrial work.

Claimant's mental impairments must also be considered, however. In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. An individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence. SSR 97-6p.

The administrative law judge finds that Claimant is depressed, angry and drinking heavily. However, the evidence does not show that Claimant is treating for his depression. If Claimant's mental condition was severe, Claimant would qualify for services from Community Mental Health. Nor has Claimant decompensated so as to require emergency medical treatment for any of his mental symptoms. Furthermore, in evaluating the entire record for credibility, the

undersigned finds discrepancies in Claimant's testimony regarding his alcohol intake. Accordingly, the Administrative Law Judge finds that Claimant is able to do his past relevant work of assistant driver/stocker and/or light industrial.

As Claimant's impairments do not prevent him from performing past relevant work, Claimant is not considered disabled under the fourth step. It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth step.

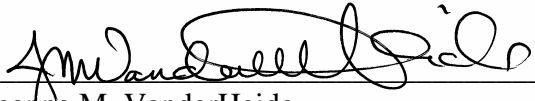
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "disabled" for purposes of the MA program.

DECISION AND ORDER

This Administrative Law Judge finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and it is ordered that

the Department's decision in this regard be and is hereby AFFIRMED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/25/10

Date Mailed: 01/27/10

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/dj

cc:

